

through the operator's line of vision and to the side or bottom of the glass. In addition, there were eight to ten hairline cracks radiating from the point of impact but no broken glass.

Mr. Gregg Brown, the foreman, who took the photograph testified he was very familiar with the 644-B loader; that the crack on that glass was "right in the middle of the windshield" but that there was no "hole" in the windshield; that the windshield was not cracked through and that when seated in the vehicle the large crack "in the middle" was above the operator's line of vision. He further testified that if the crack had obstructed the operator's line of vision he would have replaced it. Mr. Lucas, a loader operator, testified the cracks in the glass did not interfere with his operation of the machine.

Despite the fact that all the witnesses agreed that whatever impairment of vision existed did not make operation of the loader unsafe, the Solicitor argued and continues to argue that the "slightest impairment of vision" means the glass is not in "good condition" and constitutes per se a non-S&S violation. In his post-hearing brief, the Solicitor also asserts that "good condition" clearly implies an unbroken window. Since the undisputed evidence from the photograph (OX-6) and the testimony of the operator's witnesses conclusively show that the windshield in the 644-B loader, while cracked, was not "broken," the Solicitor's argument is obviously fatally flawed.

I find that as properly interpreted the standard was intended to promote safety not the sale of safety glass. Since the hazard against which the standard was directed, likelihood of injury to the loader operator or foot traffic, did not exist, I conclude the condition of this windshield was "good" and that the violation charged did not, therefore, occur.

Citation No. 2521743

On the same date as the previous citation a John Deere 644-C front-end loader was also cited for a non-S&S violation of 30 CFR 56.9-11. Inspector Grabner's 104(a) citation charged the windshield was "broken 'spider-web crack.'" In his testimony he described the windshield as "spider-webbed cracked the entire length of the windshield, from side to side, and from height to width." He further testified that the loader was being used to "push material into the surge pile" and to "clean up and load trucks." He said it was his observation that the "visibility of the operator to see through was obstructed by the number of cracks that ran the